



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**[Docket Number USCG-2019-0168]**

**RIN 1625-AA08**

**Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh  
Pennsylvania**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for parts of the navigable waters of the Allegheny, Monongahela, and Ohio Rivers. This action is necessary to ensure safety of life on these navigable waters during the weekend of the Garth Brooks concert at Heinz Field. Persons and vessels are prohibited from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative. In addition, persons and vessels are prohibited from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

**DATES:** This rule is effective from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0168 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh Waterways Division, U.S. Coast Guard; telephone 412-221-0807, email [Jennifer.L.Haggins@uscg.mil](mailto:Jennifer.L.Haggins@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Marine Safety Unit Pittsburgh
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On March 12, 2019, Heinz Field notified the Coast Guard that it would be holding a concert from 5 p.m. to 11 p.m. on May 18, 2019. Heinz Field is located in close proximity to the banks of the Ohio and Allegheny Rivers, which are high vessel traffic areas used by both commercial and recreational vessels. Due to the proximity of Heinz Field to these waterways, it will be a destination for many recreational vessels to anchor and loiter throughout the concert weekend of May 17, 2019 to May 19, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety concerns and hazards that could occur in this area during the concert.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041(a). The COTP has determined that this special local regulation is necessary to maintain an open navigation channel and ensure the safety of vessels on these navigable waters during the concert weekend. Risk of collisions near Heinz Field is a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters adjacent to Heinz Field along the Allegheny, Monongahela, and Ohio Rivers before, during, and after the Garth Brooks concert weekend.

### **IV. Discussion of Comments, Changes, and the Rule**

This rule establishes a special local regulation from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019. The special local regulation will cover all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8, Allegheny River, Fort Pitt Highway Bridge at MM 0.22, Monongahela River, and West End-North Side Highway Bridge at MM 0.8, Ohio River. The duration of the zone is intended to ensure the safety of vessels on these navigable waters. This special local regulation applies to any vessel operating within the

area, including a naval or public vessel, except a vessel engaged in law enforcement, servicing aids to navigation, or surveying, maintaining, or improving waters within the regulated area. No vessel is permitted to loiter, anchor, stop, moor, remain or drift in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the COTP or a designated representative. In addition, no vessel or person is permitted to loiter, anchor, stop, remain, or drift more than 100 feet from any riverbank unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF-FM Channel 16. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated as a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and

pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and location of the special local regulation. The special local regulation will impact a small section of the Allegheny, Monongahela, and Ohio Rivers, less than three total miles. Moreover, the special local regulation will not stop vessels from transiting the area, it will only establish certain areas where vessels are prohibited from loitering, anchoring, stopping, or drifting.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who

enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR**

**FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation covering less than 3 miles and lasting approximately 3 days. It will prohibit persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T08-0168 to read as follows:

**§ 100.T08-0168 Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA.**

(a) Location. The following is a special local regulation for all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8, Allegheny River, Fort Pitt Highway Bridge at MM 0.22, Monongahela River, and West End-North Side Highway Bridge at MM 0.8, Ohio River.

(b) Applicability. This section applies to any vessel operating within the area, including a naval or public vessel, except a vessel engaged in:

- (1) Law enforcement;



(2) Servicing aids to navigation; or

(3) Surveying, maintaining, or improving waters within the regulated area.

(c) Regulations. (1) In accordance with the general regulations in § 100.801, no vessel shall loiter, anchor, stop, moor, remain, drift, or act in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any riverbank within the regulated area unless authorized by the COTP or a designated representative.

(3) A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh. They may be contacted on VHF-FM Channel 16.

(4) Persons and vessels permitted to enter the regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) Effective period. This section will be effective from 4 p.m. on May 17, 2019 through 3 p.m. on May 19, 2019.

(e) Informational broadcasts. The COTP or a designated representative will inform the public of the effective period for the special local regulation as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: March 21, 2019.

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A.W. Demo,  
Commander, U.S. Coast Guard,  
Captain of the Port Marine Safety Unit Pittsburgh.  
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